

STATE OF OHIO  
THE STATE EMPLOYEE RELATIONS BOARD  
FACT FINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD  
2002 DEC 31 A 10:07

In Re: :  
: :  
International Association of : Case No. 02-MED-08-742  
Firefighters Local No. 442 and :  
City of Marietta :

The undersigned, Steven L. Ball, appointed as State Employee Relations Board fact-finder, makes the following report:

I. Hearing

This matter was heard at the City of Marietta commencing at 9:30 a.m., December 10, 2002. The following were present:

For the Bargaining Unit

Dennis Haines, Attorney at Law  
Richard Steward, Firefighter  
Bruce Weckbacher, Firefighter

For the City of Marietta

Gregory Scott, Attorney at Law  
Robert Boersma, Safety-Service Dir.  
Bill McFarland, Asst. Safety-Service Dir.  
Fire Chief Ted Baker

II Criteria

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### III Issues and Recommendations

The City and the Union have agreed to retroactively apply any changes to the current agreement. Accordingly, all provisions recommended below apply retroactively from November 1, 2002.

#### Finding of Fact #1 - Fitness Incentive Pay

The Union proposes to modify the current provision for fitness incentive pay to multiply the amount currently awarded to qualifying firefighters (\$300) times the number in the bargaining unit (now 33) and divide that total among qualifying firefighters. Nineteen firefighters earned the pay in 2002, for a total cost of \$5,700.00.

The Union argues that the money has been budgeted, and should be used. The City argues that this would increase the payout without increasing performance, and that the current language was included in the last agreement at the request of the Union, being modeled after that for the City of Cambridge. The fact finder does not believe that increasing amounts to those firefighters who qualify would work to increase overall participation, the ultimate goal of such a program.

#### Recommendation

The fact finder recommends that Article 31 §5 in the past agreement be adopted unchanged into the new agreement.

## Finding of Fact #2 - Vacation

The Union proposes increasing the vacation to three weeks after five years, four weeks after ten years, and five weeks after fifteen years of service. This would modify the current language of three weeks after eight years, four weeks after ten years, and five weeks after fifteen years. The proposal would add an additional day for each full year over twenty years, to a maximum of five additional days.

The Union argues that this would result in the same vacation time as that provided policemen in the City and that the firemen work 2756 base hours per year, to 2080 for all other city employees. The City argues that because of the 24 hours on, 48 off, coupled with “Kelly” days, the firefighters should not be compared to policemen. The Union counters that the 24 hour day required of firefighters benefits the City, and hours worked can only mean time on the job.

The Union offered comparables to show that many municipalities whose firefighters perform similar duties as Marietta’s have vacation which would equal or exceed the Union’s proposal. The City argues that the comparables are not appropriate, as they include communities such as Blue Ash, Avon Lake, and Bay Village which are not in the geographical area and not comparable economically. The City offers comparables generally limited to Southwestern Ohio, and argues that the City of Cambridge’s contract grants roughly the same number of weeks but does not offer as much actual vacation as when Marietta’s practice is applied. That past practice results in firefighters obtaining an average 2.67 days when 2.3 days is the average days worked per week (53 hours).

Given the City’s past practice in computing vacation days, it does not appear necessary to increase vacation to meet any comparable standard. The Union opposed the City’s proposal to specify vacation hours (versus weeks) in the last agreement. Certainly the use of the term “week”

is confusing when applied to a firefighter's schedule and the federal limits for overtime. Any change in vacation should, in this fact finder's opinion, be coupled with a complete revision of the vacation provision.

### Recommendation

The language of Article 18 in the current agreement in Article 18 should be retained without change.

### Finding of Fact #3 - Sick Leave/Personal Leave Days

The Union proposes to permit employees to use up to 24 hours of accumulated sick leave in two hour increments for personal reasons, but not to cause overtime. The Union notes that the provision is in the police agreement, and they are given 8 hours time off for their birthdays.

The City refers to previous fact findings and arbitrations finding the employees to have sufficient time off. The City further notes 120 sick leave days can be accumulated and that only one-half taken at retirement. Thus, depending on circumstances, the employee may not be giving up anything in return for the hours used. The City permits trading of days among employees and with the 24 hours on 48 hours off schedule there is no need for personal days. According to the City, comparable cities such as Zanesville and Portsmouth do not have personal days; according to the Union, those and all of the Union's comparables do provide for personal days.

The Union stated that it would take its proposed changes to Article 30 off the table (accumulated sick leave to be paid at 100% up to 60 days).

The fact finder believes that the current framework for taking time off for personal matters is sufficient. Certainly the fact finder was presented with no facts to show that the employees have failed to obtain sufficient time off for personal matters, or have been forced to take vacation days for personal business whether or not the standard for comparables is to provide personal days.

Recommendation

The Union's proposed modifications to Article 20 should not be adopted, and Article 20 should be retained in its current form.

Finding of Fact #4 - Overtime Callout

The Union wishes to add language to Article 15, §2 to require the Chief to callout additional employees during a public relations event lasting more than two hours. The present provision now requires callouts of additional employees when staffing levels are below 8 employees due to a run outside the City or a hazmat run. The Union is concerned regarding staffing levels during the Sternwheeler festival and football games.

The City argues that this is a wholly management prerogative and that the City is aware of no comparables. The Union responded that other locales do have minimum management guidelines.

The fact finder is persuaded that the Union has not demonstrated a need for intrusion into this management area.

Recommendation

Article 15 §2 should remain as stated in the last agreement.

Finding of Fact #5 - Longevity Pay

The Union asks that Article 16 §1 be amended to calculate the longevity bonus upon “wages” rather than “salary,” thus including overtime, fitness incentive and all other forms of compensation listed on the W-2. The provision is based upon the police contract and the Marietta Teamsters agreement.

The City states that the Marietta Teamsters agreement is less generous because of lower percentages and that the current calculation is generous among comparables. The City also argues that longevity pay was increased three years ago and that the extension of such bonuses would cost an additional \$2,500.00 annually, and any change must be factored into the total wage package.

The fact finder is persuaded by the use of such calculation in the other city agreements, and the underlying intent of the provision, i.e. to reward loyal employees. If the employee is asked to work overtime, then any bonus should be calculated on the work he does, not on the minimum work possible.

Recommendation

Article 16 §1 should be modified as in the Union’s proposal, attached hereto as Exhibit 1.

Finding of Fact #6 - Uniforms

The Union requests that the uniform allowance be increased by \$80.00 the first year of the agreement, \$20.00 the second year, and \$20.00 the third year. The allowance was \$300.00 in 1967. The Union cites a 48% increase in costs from 1990-1999, when it was increased \$20.00 for each year of the agreement, to \$360.00. The Union says that uniforms have been provided to new hires from those leaving the department, saving the City money.

The City points out that new hires get an additional \$400.00 after the probationary period, and a \$200.00 allowance is provided after any promotion. The City cites previous decisions finding the current package average or above-average. The City also contends that any increase should impact upon the total wage package. The City's comparables contain allowances smaller, and larger than those currently provided by Marietta.

The Chief states that more than three outfits are needed per year, and concedes the increase in costs of 5% per year since 1999 which means that the employees continue to fall behind in the benefit granted many years ago.

Uniforms are a management requirement. The fact that the employee would be purchasing some clothing if he were not so employed provides little, if any, justification to require the employee to bear the cost of his or her uniform.

The acceptance of the proposed increase will place the employees no higher than the norm based upon the comparables presented and will no more than adequately provide for uniform needs.

### Recommendation

The Union's proposal to modify Article 26 §1 should be adopted, as per the attached Exhibit 2.

### Finding of Fact #7 - Protective Clothing

The City wishes to delete language in Article 31 §§2 and 3 relating to turnout gear and airpack minimums. The Union acknowledges that the City has met its requirements, but is unclear to the fact finder if this was agreed to by the parties at the fact finding hearing.

## Recommendation

Article 31 §§2 and 3 should be modified as per the City's proposal attached hereto as Exhibit 3.

## Finding of Fact #8 - Insurance

The Union proposes that the City increase coverage by adding eye and dental care, and increase the City's portion of the premium for all care to 100% from 88%. The Union's proposal is for "comprehensive major medical" coverage, etc., though the parties have been operating under a Memorandum of Understanding by which the employees may choose from a comprehensive major medical plan, a PPO, and a point of service plan through Anthem.

The City proposes eliminating the comprehensive medical plan, because there is little market for such a plan, and very difficult to obtain a quote. Only one firefighter uses such a plan.

The City has a joint insurance Committee, which includes a firefighter representative, which attempts to reach a consensus on coverage and offerings. The Committee has not met recently, and the current premiums expire February 1, 2003.

Without any specific proposed coverages, premiums, etc., this fact finder is limited in his ability to make a finding of fact. The Union acknowledges that its proposal of a comprehensive major medical plan is unrealistic, but believes that the City's proposal to limit increases in premiums to 10% by limiting changes in benefits "if there is a consensus" by the insurance Committee is not workable. The City wishes to retain the current 88% City contribution.

The City cites to many comparable municipalities which reveals no particular standard but does include many municipalities which pay more than 88% of the insurance premiums, including

Athens, Chillicothe, Portsmouth, and Steubenville. The fact finder believes the effect of the 12% contribution on employees is not unduly burdensome and within comparable limits.

It is clear to the fact finder that the current PPO and POS plans, or some equivalent are the only realistic approaches to coverage. The fact finder has not been presented with any information by the Union as to the prospective effect of vision and dental care on premiums. Nor has it proposed any specific types of coverage. Thus, the fact finder cannot recommend such coverage.

The City's proposal to limit its expense to 10% premium increases in any new plans appears to this fact finder attractive in the abstract, but fraught with practical problems. Insofar as the City has obtained a \$743,000 reimbursement from Anthem, based upon its switch from a mutual company to a stock company, this fact finder sees no particular problem with the potential for increased premiums to be paid after February 1, 2003.

Thus, the fact finder recommends that the current Memo of Understanding be continued as to the POS and PPO plans, with substantially equal coverages as to that now provided, and a continuation of the 88%/12% premium contributions by the City and the employees, respectively.

#### Recommendation

The current language of Article 25 §2, pages 31-32 of the current agreement, will be replaced with the following:

“The City will offer at least two benefit plans - PPO and POS as substantially equal to current benefits of those plans as reasonably possible. The City shall pay 88% of the premium costs benchmarked to the PPO, and the employee shall pay 12%.”

### Finding of Fact #8 - Wages

The Union proposes an increase of \$.82/\$.85/\$.90 per hour to each classification for each year of the agreement, which averages near 6%. The City proposes a 2% increase across the board which constitutes a \$.27/hour average increase.

In the last contract, the employees received 4% increases each year. The increase proposed by the Union is designed, in part, to close the “parity” gap with the policemen. Firefighter Stewart provided the fact finder with historical data to show that the two services were originally treated equal in the 19<sup>th</sup> Century through the early 1970's, with a “gap” widening in the 1980's.

Parity between policemen and firefighters is a recurring dispute within the public employee labor relations community. This fact finder has not been presented with any detailed examination of the respective duties of the two services, an apparent sine qua non of any “parity” argument. The obvious differences between the two services are that police officers carry guns and arrest people, and work traditional 8 hour shifts, and firefighters fight fires and respond to other life and property threatening emergencies, work 24 hour shifts, and in this case are trained as EMT's. Parity has a two sided face. Parity can be achieved by slowing any increase in the rate of pay for the service with the greater pay, or by raising the pay of the lower paid service. In any event, the fact finder believes that comparables are a better premise upon which to judge wage rates.

The Union also argues that prior to this, the City used Athens, Cambridge, Chillicothe, Portsmouth and Zanesville as comparables. Using those cities, the Union shows a 5-7% “lag” for various pay classifications based on average compensation and using a formula devised by the City. Moreover, the Union has presented data to show the Marietta F.D. provides services a well above-average number of runs. With the exception of Chillicothe, the remaining comparable cities do not

require EMT and hazmat training as does Marietta. The Marietta force is obviously well-trained to provide extraordinary services. Given the greater duties imposed upon the Marietta Firefighters via EMT, and total runs, it is apparent to this fact finder that the Marietta Firefighters should certainly be no less than the average.

The Union cites to additional cities Avon Lake, Bay Village, Blue Ash, and Forest Park, which it contends are similar to the Marietta Fire Department in duties. The Union's comparisons, showing a 7% "lag" from Southeast Ohio average wages, are apparently based upon total wages paid, using (at least in part) September, 1999 figures. Based upon those exhibits and even discounting Chillicothe, and the four non-Southeast Ohio comparables offered by the Union, there appears to be a .058% negative difference between Marietta's firefighters and the average of the other four Southeastern Ohio comparables for a 6 year firefighter.

The City argues a "very limited ability to pay." The estimated increases in revenue for 2002 are 1.50%, and for 2002 1.25%. The City anticipates that it may be required to use its carryover of \$3,261,006 but obviously can only do so once. The general assembly, it says, has squeezed it and other municipalities out of previously available income. The City provided a plethora of synopsisized newspaper articles and other publications to demonstrate that municipalities will see reduced income in 2003 based upon the current state of the economy. The City criticizes the use of Chillicothe, which it describes as a bedroom community to Columbus. The City provides data to show that entry level firefighters rank above average in its comparables, but it includes comparables other than that which it has used in the past.

Over the past ten years, the wage increases to the bargaining unit ranged between 1994 at 3.4% and 1992, 1993, 2000-2002 at 4%. For purposes of comparing other fire departments' salaries,

this fact finder prefers to use the SERB-reported annual salaries showing an average of \$29,782.40 starting salary for the selected comparables (others Cambridge, Portsmouth, and Zanesville), with Marietta at \$30,095. The maximum salaries for the comparables averages \$36,720.60, with Marietta at \$36,599.

The 2% proposed by the City appears to be inadequate. The financial information provided by the City to show a potential fiscal crisis seems exaggerated, and in some cases contradictory. In any event the City has the means to raise revenues if needed to pay reasonable wages. The firefighters may lag somewhat behind applicable comparables, but not to the extent of a clear injustice.

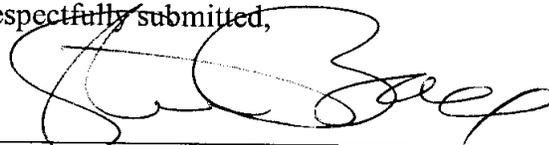
The Union has proposed increases which would provide more increases to the lower level employees, on a percentage basis, than to the higher paid classifications. As the Union represents all, the fact finder has recommended pay increases for all classifications which would reflect that intent.

Recommendation

Article 14, Pay Scales, Section 1, Pay Rates shall be changed to reflect across the board wage increases added to each classification in the following amounts:

First Contract Year	Second Contract Year	Third Contract Year
\$0.48	\$0.50	\$0.52

Respectfully submitted,



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Steven L. Ball, Fact-Finder  
December 30, 2002

CERTIFICATE OF MAILING

I hereby certify that the Fact-Finding Report has been sent by fax and overnight mail to Gregory B. Scott, 50 West Broad Street, Suite 2600, Columbus, Ohio 43215; and Dennis Haines, National City Bank Building, P. O. Box 849, Youngstown, Ohio 44501-0849; and the original Report has been sent by ordinary U.S. mail, postage prepaid, to Dale A. Zimmer, Administrator, Bureau of Mediation, SERB, 12<sup>th</sup> Floor, 65 East State Street, Columbus, Ohio 43215, on this 30<sup>th</sup> day of December, 2002.

A handwritten signature in black ink, appearing to read "Steven L. Ball", written over a horizontal line.

Steven L. Ball

ARTICLE 16

LONGEVITY PAY

Section 1. Firefighter's Longevity

Each employee of the Marietta City Fire Department shall earn beginning with his fifth year of service and each year thereafter the following sums as longevity pay:

<u>Completed Years of Service</u>	<u>Longevity Bonus</u>
After 5 Years	1% of annual <del>salary</del> <b>wages</b>
After 8 Years	2% of annual <del>salary</del> <b>Wages</b>
After 11 Years	3% of annual <del>salary</del> <b>Wages</b>
After 15 Years	4% of annual <del>salary</del> <b>Wages</b>
After 19 Years	5% of annual <del>salary</del> <b>Wages</b>
After 23 Years	6% of annual <del>salary</del> <b>Wages</b>

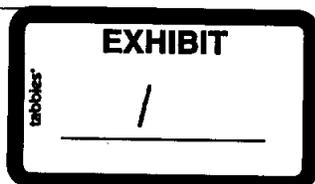
**Annual wages shall be determined by calculating the employee's gross wages paid for the period November 1 through October 31.**

Years of service shall be determined from the employee's date of hire by the City and payment for longevity shall be made annually in two ~~equal~~ installments by separate checks, one payable on June 1<sup>st</sup> **for the period, November 1<sup>st</sup> to April 30<sup>th</sup>** and the other payable on December 1<sup>st</sup>, **for the period, May 1<sup>st</sup> to October 31<sup>st</sup>**. Payment for less than an exact year's service shall be pro-rated per month for each eligible employee.

Effective \_\_\_\_\_, we have reached tentative agreement on the above listed contract provision. Final agreement is contingent upon approval by City Council and ratification by the Union.

For the City:

For the Union:



ARTICLE 26

UNIFORM PURCHASE ALLOWANCE

Section 1.            Amount

Each member of the bargaining unit shall be entitled to a uniform allowance of ~~\$320.00~~ **(\$400.00)** in the first year of this Agreement, ~~\$340.00~~ **(\$420.00)** in the second year, and ~~\$360.00~~ **(\$440.00)** in the third year. If a bargaining unit member is promoted in rank, he shall have an additional uniform allowance of 200.00 available for sixty (60) days after the promotion takes effect for ordering uniform items.

Upon satisfactory completion of his probationary period a member of the bargaining unit shall be entitled to a one-time uniform allowance of \$400.00 in addition to the annual amount.

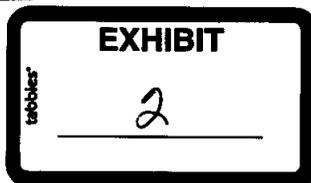
Items which can be purchased with the uniform allowance are listed on the schedule attached to this Agreement.

Section 2.....

Effective \_\_\_\_\_, we have reached tentative agreement on the above listed contract provision. Final agreement is contingent upon approval by City Council and ratification by the Union.

For the City:

For the Union:



Proposal J

ISSUE: PROTECTIVE CLOTHING AND BREATHING APPARATUS

Article 31, Sections (2) & (3), pp. 41-42.

City's Position: Delete the second sentence of §(2) as historical.

Rewrite §(3) to read: "The City will maintain twenty-four (24) units of positive pressure breathing apparatus for the Fire Department's use."

Rationale: Both sections were written to implement additional requirements in the 2000 contract. Now that the implementation has occurred, the language should reflect maintenance of the requirement only.

